IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-12-2006

CORAM

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

WRIT PETITION No.4569 OF 1999

A.Janbah ... Petitioner

-vs-

Deputy Examiner of Local Fund Accounts,
64, Thayar Sahib Street,
Chennai-600 002. ... Respondent

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the records in Rc.No.AA3/45805/75 dated 9.7.1976 passed by the Respondent to quash the order in RC.No.AA3/45805/75 dated 9.7.1996 and to reinstate the petitioner in service under the Respondent with backwages and all service benefits.

For petitioner : Mr.K.Balakrishnan

For respondent : Mrs.C.K.Vishnu Priya,
Govt.Advocate.

O R D E R

The petitioner was working as an Audit Assistant in the office of Assistant Examiner of Local Fund Accounts Department till 04.08.1976, for a period of 3 ½ years. While so, he was subjected to disciplinary action on the ground of disobedience to duty, using unparliamentary words against the higher officials; charges were framed and he submitted his explanation that there was no insubordination, but, without any evidence, the respondent removed him from service on 09.07.1976, by an order in R.C.No.AA3/45805/75 and the petitioner preferred an appeal. There was some delay. While so, on 31.07.1980, the Examiner rejected his appeal on the ground of delay. Therefore, the petitioner approached this Court for necessary relief.

2. The contention of the petitioner is that there is no evidence against him and he was removed without any evidence and the same is not considered by the appellate authority.

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3. The respondent filed a counter, wherein it is stated that the petitioner, while working as an officiating Audit Assistant at Salem, indulged in most indisciplined behaviour such as abusing his immediate supervisor and when he was questioned he addressed letters using intemperate language using unparliamentary words and he gave a threatening explanation, sending a copy to the Government without rooting the same through proper channel, and refused to receive the orders of transfer from Salem and it is a disobedience to the duty.

4. It is also stated that the petitioner did not remit the cost of the Department Manuals borrowed by him and therefore, the action was initiated against him under Tamil Nadu Civil Services (CCA) Rules and charges were framed under Rule 17 (b). The petitioner denied all the charges in his written explanation, dated 04.08.1975, and he expressed his desire to be heard in person and also mentioning the names of certain persons to be summoned for cross-examination.

5. In para 4 it is stated that an Office Memo dated 06.01.1975 was issued to the petitioner to confine his reply to the charges and inform the reasons for summoning certain witnesses and files. Again, another Office Memo was issued on 10.12.1975 and the petitioner gave a reply with all relevant facts and the said reply was in bad taste with abusive words. Hence, an oral enquiry was ordered to be conducted by the respondent on 08.04.1976 and 09.04.1976 and, in the oral enquiry, 10 witnesses were examined. After completion of oral enquiry, since the charges were proved, the petitioner was called upon to show cause against the provisional conclusion in Proc.Rc.No.AA3/45805/75, dated 04.05.1976. The petitioner pleaded not to impose any punishment of removal but the disciplinary authority/respondent passed the order of removal from service and the order was communicated to the petitioner by registered post and he acknowledged the same, but the petitioner did not file any appeal in time and after 3 ½ years, he preferred an appeal and the same was dismissed. Therefore, there are no merits in this Writ Petition and the same may be dismissed.

6. Heard the arguments of both sides.

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7. Perused the Charge Memo, dated 21.07.1975, issued by the disciplinary authority, namely, Deputy Examiner of Local Fund Accounts, Madras, and also the first proceedings passed by him on 09.07.1976, along with the order in appeal passed by the Examiner of Local Fund Accounts in R.C.No.25988/AA3/80, dated 31.07.1980.

8. The order of Examiner of Local Fund Accounts referred to above is as follows :

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"The appeal submitted by Thiru A.Janbah, in the reference second cited against the orders of the Deputy Examiner of Local Fund Accounts, Madras, is rejected under Rule 27 of Civil Services (CCA) Rules, as it is time barred."

Thus, it is clear that the impugned order is rejected on the ground of delay and it is not on merits. The appeal was submitted on 15.03.1980 and the same was rejected on 31.07.1980. The impugned order does not disclose that before rejecting the appeal whether any opportunity was given to the parties to submit their contentions. The impugned order also does not clarify any other facts.

9. In the appeal, the petitioner has furnished some reasons for not being able to file the appeal in time. There was no discussion on these facts in the impugned order.

10. In the instant case, the Charge Memo was issued by the Deputy Examiner of Local Fund Accounts and he is the disciplinary authority. On receiving the Charge Memo, the petitioner sent an explanation, denying all the charges and requesting to examine certain witnesses and also to verify certain documents. The oral enquiry was conducted on 8th and 9th April, 1976 by the same officer and it was not a regular domestic enquiry.

11. The main contention of the counsel for the petitioner is that the witnesses are not examined; their statements are not recorded and their signatures are not obtained on any of the statements.

12. In fact, there is no enquiry at all and the Deputy Examiner of Local Fund Accounts, who is the disciplinary authority and who has issued Charge Memo, prepared the typed proceedings as if he made some enquiries at the office of the Assistant Examiner at Salem on 08.04.1976 and 09.04.1976, by holding a camp at that place and the original record will prove the same.

13. In order to verify the truth or otherwise of the allegations, the respondent was directed to produce the original record and the same is produced. This Court has noticed at pages 283 to 287, the typed proceedings and they are reproduced hereunder for a just decision.

"Office of the Asst.Examiner of
Local Fund Accounts, Salem.

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The enquiry was started at the Office of the Asst.Examiner, Salem at 10-30 A.M. on 8-4-76. The following were present :

1.Thiru A.Janbah
2. " C.Lakshminarayanan
3. " M.Duruvan
4. " T.Satyanarayanan
5. " R.Balaprakash
6. " K.Dhakshinamoorthy
7. " K.Selvaraj
8. " S.Perumal
9. " S.Mariappan
10." S.Venkatanarasimhan,
Asst.Engineer.
11.Thirumathi Meenakshi.

1) He wants all the files to be shown to him. The files were placed before him.

QUESTION by JANBAH :

I was not given any camp while Temporary Audit Assistants (4 Nos.were sent to camp) was anybody drawn Concurrent Audit Section where you worked, taken from Concurrent and sent to Camp ?

REPLY :- I do not know.

QUESTION by DE :- Did you ask for a transfer to regular audit to have camp work.

REPLY :- Yes. Not only orally and once in writing. In March,74 I remember to have applied. The Invoice files were shown to him. He did not want to verify. The point was not pressed.

JANBAH : - Sathayanarayanan's application for transfer was sent to Head Office promptly while my application was not sent. The reasons may be examined.

QUESTION TO SATHYANARAYANAN :-

Q. by D.E. : How long were you working in Salem ?

A. : From May,73 till 15-2-75. After 2 years of service at Salem, I asked for transfer on health grounds.

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QUESTION TO JOHNBAH :

When did you join at Salem ?

REPLY :- 18-2-1974.

QUESTION BY D.E. :- When did you apply for TRANSFER ?

In 2/75.

I applied for transfer on account of acute conditions and out of the outstation effects.

QUESTION BY D.E.:- Are you aware of the circular that frequent transfer applications should not be entertained ?

REPLY :- Johnbah .. Not at all.

JOHNBAH :- He accused that C.17023 given to him with an altered date seal on 28-11-74.

NOTE :

The Distribution Register was verified. The Current No.17023 was registered on 28-11-74 only. There is no doubt about it.

JOHNBAH :

i) My increment on 1-4-74 was sanctioned on 13-8-74. Hence, 4 months only after my representation. That shows things are done to me why after representations.

ii) My P.F.Application dt.8-10-74 was not at all forwarded ?

QUESTION by D.E.: Was this sent by Invoice or in person ?

REPLY :- I gave it in person.

NOTE : P.F.Application was registered as Current Nos.14788 and clubbed with S.9444.

JOHNBAH : I was not given any glass (tumbler) for 73-74 and 74-75 though my signature was obtained for both years.

NOTE : It was stated that the Tumblers are all available and no one took it. They all used them in office.

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JOHNBAH : The tumblers asked for by me were not given to me despite requests whereas Thiru Aramuthuam got it and had it in his possession after coercion.

NOTE :- STATEMENT – Non-payment of arrears to me has caused untold hardship to me.

NOTE : This was verified with reference to O/c of T.T.A.Bill. The T.T.A.Bill was dt.19-2-74 was returned to him on 20-2-74 and received back on 23-2-74. As it was pay-bill time at the end of Feb, this was put up to Asst.Examiner on 11-3-74. Approved by Asst.Examiner on 15-3-74 encashed on 19-3-74 and paid to him. There was no delay as stated by him.

NOTE :

As regards the other point that surrender leave salary was not claimed to him in in 2/75 and by that he lost monetarily as surrender in Feb.75 was advantaging.

QUESTION by D.E. : From the file, it was seen that some 6 others were informed accordingly.

A.: They were getting T.A.and hence they did not bother.

Some privileges against the rules were given to others but it was denied to me. Why it was denied ?

QUESTION by D.E.: But you were not prepared to accept such privileges ?

A.: Yes.

QUESTION TO THIRUMATHI MEENAKSHI by JOHNBAH :

Have I misbehavioured with you or ill-treated you or in any way offended you at any time ?

REPLY :- BY Smt.MEENAKSHI : .. No.

JOHNBAH : Applications for dues are written by me and so Asst.Examiner is prejudiced. I refused to contribute to Thiru Mani's marriage present and I did not go to Asst.Examiner's house on 1st Jan.75 and I think that these charges etc. are due to these.

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CHARGE -I.

My applications and petitions are in the best interests of the Department and not in any other sense.

NOTE : A gang cooly by name Ponnuswamy is working in the Current Audit Section as peon, He was brought Thru John Bah for corroborating this statement.

PONNUSWAMY :

I work in Concurrent Audit Section. I don't do any private work but only office work.

I used to get tiffins for Asst.Examiner. The amount is given by Audit Clerk. Two sets of tiffin and 2 sets of coffee for Rs.6-00. The amount is given by the Audit Clerk. He is coming to Concurrent Audit Section once a month. This is the procedure followed every month and still continues. He was asked to go.

QUESTION :

You have asked what amount was paid by Sathayanarayanan for forwarding his transfer application etc. How did you get the information?

ANSWER : Merely for information sake I asked
I have no further proof.
I have paid Rs.10/- to Sampath on 27-3-75. This Thiru Balakrishnan also knows. I don't know the purpose for which the amount was collected.

ANSWER : Sampath denies. Thiru Balakrishnan also denies.

QUESTION BY JOHNBAH :

10A (i) candidates were sent to camp for getting some amount by way of bribe for e.g.C.Sengottuvel, Thiru Abdul Rahoof and Thiru Loganathan.

ASST.EXAMINER : Stoutly denies.

JOHNBAH : said he got the information from Thiru Rahoof. But Rahoof is not available to corroborate.

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CHARGE No.2.

The petition referred to was not at all sent. This was only to bring a psychological atmosphere to get a solution for the long standing arrears. I have no intention of sending it.

CHARGE No.3.

"Unparliamentary words" were not used by me. I did not consider those words in my petition as unparliamentary but only colloquial expression to denote the meaning of the difficulties, I was unnecessarily put to. If it is unparliamentary, it would not be used in future.

CHARGE No.4.

I thought that I would be relieved immediately after receiving the Transfer order which was on 21-3-75. I had no money with me. I applied for T.T.A. and Pay advance etc. and wanted to get relieved after getting all the dues. So it was not my intention of disobeyance by only due to fear that I will be relieved forthwith before receipt of the amounts and hence I delayed getting the relief order till 31-3-75."

14. Though the proceedings are lengthy, they are reproduced in the interest of justice.

15. From pages 299 to 310, the findings of the Enquiry Officer are noticed in the original file. The Enquiry Officer is no other than the Deputy Examiner of Local Fund Accounts, who has issued the Charge Memo and who has ultimately issued the final order of removal.

16. It is stated by both sides that the Deputy Examiner of Local Fund Accounts is the disciplinary authority. Thus, it is evident that the disciplinary authority issued the Charge Memo and he conducted the enquiry and he did not record the statements of any witnesses, did not produce the witnesses as demanded by the petitioner for the detailed enquiry and did not permit for cross-examination and also did not produce the relevant records, but ultimately prepared a report for himself and thereafter passed the final order of removal, holding that the charges are proved and a second show cause notice has been issued why the petitioner should not be removed from service.

17. This Court has no hesitation to hold that the two orders passed by the respondent are illegal and the said illegal order has been confirmed by the appellate authority on the sole ground that there is a delay in preferring the appeal. The

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impugned order is without assigning any valid reasons, except quoting the relevant rule. The order of removal is totally unconstitutional, illegal and a capital punishment in service law has been imposed on the petitioner for the reasons best known to the respondent. Even in the counter, it is stated that it is only an oral enquiry. Even that enquiry does not disclose that the statements of any witnesses are recorded. Since the entire proceedings and the final orders of removal are based on the oral enquiry conducted by the disciplinary authority, the entire proceedings are liable to be quashed.

18. The forceful argument of the learned counsel for the respondent is that the petitioner has indulged in misconduct and used unparliamentary language and also misbehaved with his colleagues and officials and acted in insubordination, resulting in indiscipline, therefore, a disciplinary action is necessary under Rule 17 (b) of the Tamil Nadu Civil Services (CCA) Rules and accordingly, the action is initiated.

19. Discipline is necessary not only in service but in the human life. If any individual is indulged in any indiscipline, the authority has every right to initiate action but it should be strictly in accordance with the well established rules and the provisions of the Constitution of India and it should not be as per the whims and fancies of any individuals. When conduct rules are framed, it is necessary for the authority to follow the same.

20. In the instant case, the impugned order is passed under Rule 14 (2) (sic 14 (a) (2)) of Tamil Nadu Civil Services (CCA) Rules, hereinafter referred to as CCA Rules.

21. Rule 14 (a) (2) deals with the authority which may impose the penalties. While so, Rule 8 deals with penalties. In this case, the respondent, ignoring Rule 9, proceeded with Rules 8 and 14.

22. Rule 9 (c) reads as follows :

> "Rule 9 (c) (1) : The Governor or any other authority empowered by him by general or special order may -
>
> (i) institute disciplinary proceedings against any Government servant ;
>
> (ii) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 8.

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(2) The authority competent under these rules to impose any of the penalties specified in items (i) to (iii) and (v) of Rule 8 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in items (iv) and (vi) to (viii) of Rule 8 notwithstanding the fact that such authority is not competent under these rules to impose any of the latter mentioned penalties."

23. Thus, it is clear that a disciplinary action is to be initiated against any Government servant on whom the disciplinary authority is competent to impose any penalty specified in Rule 8.

24. Rule 17 (b) deals with procedure to be followed to impose major penalties. It reads as follows :

"Rule 17 (b) (i) : Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850 (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in Rule 8 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a return (sic written) statement of his defence and to state whether he desires an oral inquiry or to be heard in person. On both an oral inquiry shall be held if such enquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. (This sentence is added as per G.O.Ms.No.1176 (Per.& Admn. Reforms) (Per-N), dated 13th December,1982.) At that inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall

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be entitled to cross-examine the impresses (sic. witnesses) to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. "Whether or not the person charged desired or had an oral inquiry he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, it (sic. if) any, and a statement of the findings and the grounds thereof".

Whenever any enquiring authority, after having heard and recorded the whole or any part of the evidence in any enquiry case to exercise jurisdiction therein and is succeeded by another enquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor; or partly recorded by its predecessor and partly recorded by itself :

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(This last para and proviso is inserted as per G.O.Ms.No.616 (Per-N) Department, dated 29th June, 1982.)

(ii) After the enquiry or personal hearing referred to in clause (i) has been completed, and if the authority competent to impose the penalty mentioned in that clause, is of the opinion on the basis of the evidence adduced during the enquiry that any of the penalties specified therein should be imposed on the Government Servant it shall make an order imposing such penalty and it shall not be necessary to give the person charged any

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opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Tamil Nadu Public Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and shall be taken into consideration before making an order imposing any such penalty:

Provided further that in case of a person appointed for a post in a temporary department by recruitment by transfer from any other class or service, the State Government may at any time before the appointment of the said person as a full member to the said post revert him to such other class or service either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule.

(Clause (ii) is substituted as per G.O.Ms.No.356 (Per-N) Department, dated 24-3-1980)"

25. There are various guidelines and procedures prescribed for conducting enquiry and taking disciplinary action. In the instant case, none of the above have been followed.

26. In Gabrial v. State of Madras (1959 (2) M.L.J.15), the High Court of Madras has succinctly set out the requirements of an oral inquiry in the following terms :

"All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards. One is that the person proceeded against must be given a fair and reasonable opportunity to defend himself. Another is that the person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely during the procedural stages of enquiry but also in dealing with the evidence and the material on record when drawing up the final order. A further requirement is that the conclusion must

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be rested on the evidence and not on matters outside the record. And when it is said that the conclusion must be rested on the evidence, it goes without saying that it must not be based on a misreading of the evidence. These requirements are basic and cannot be whittled down, whatever be the nature of the inquiry whether it be judicial, departmental or other".

27. Termination of service under Labour Law is not necessarily an 'untouchable' or something used always to refer a 'punitive' action. It could be either positive termination like 'discharge' from service or punitive termination like 'dismissal' from service.

28. Discharge of an employee from service is not a punishment and hence it does not carry with it any 'stigma'; whereas dismissal from service is a punishment for a proved misconduct and hence carries with it a 'stigma'.

29. Conducting of an enquiry before discharging an employee may or may not be required. It depends upon the requirement. If an employee resigns or if an employee is unable to perform the duties on the ground of 'continued ill-health', he can be discharged whereas the general principle is that a domestic enquiry should be conducted into the misconduct alleged against the employee before he is dismissed from service, as a disciplinary measure.

30. A discharged employee is entitled to all the terminal benefits on his discharge from service; whereas a dismissed employee may not be entitled to all the terminal benefits on his dismissal from service.

31. The cardinal principles of Labour Jurisprudence require the employer to hold regular domestic enquiry against an employee before he is punished for a misconduct. Sufficient law has been developed on this subject. This concept is discussed in detail through various pronouncements of the Apex Court and our High Court. If the delinquent employee admits the guilt, there is no necessity for any enquiry. If an admission from the delinquent is obtained by the Disciplinary Authority either by coercion or inducement or misrepresentation, then an enquiry is mandatory. Where holding of an enquiry is a mandatory requirement under any Statute for dismissing the workman, the employer cannot dismiss him without conducting an enquiry, even if the employee admits the guilt in any forum other than in the course of enquiry proceedings constituted for such purpose.

32. When a Statute requires that a particular thing should be done in a particular manner, it impliedly prohibits doing

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of the same in any other manner. When the charges levelled against an employee are elaborate, they must be substantiated by evidence to be recorded at that time of enquiry and the delinquent must be given a reasonable opportunity to challenge the charges. When the legality of the termination was challenged and when the charges levelled against an employee are termed as gross misconduct in the show-cause notice itself and if proved would certainly lead to the award of the punishment of discharge or dismissal, it is not permissible for the Department to dispense with the enquiry. When the State has rigorously laid down various guidelines with regard to the disciplinary action and the procedure therefor, they must be followed scrupulously. The settled law on the question is, if it is held that in a case where an employer dismisses an employee without holding an enquiry, the dismissal must be set aside.

33. In the instant case, charge memo has been issued by the Deputy Examiner of Local Fund Accounts and he is the same person who has conducted the oral enquiry and also who has issued the impugned order of termination. That itself is sufficient to quash the proceedings. Apart from that, the mandatory requirement under CCA Rules are not followed. Therefore, this is a fit case where the impugned order is liable to be quashed.

34. A copy of this order is directed to be sent to the Finance Secretary of the State and also to the Chief Secretary of the State for thorough examination as to how and under what circumstances, such orders have been passed by the officers at certain level without following the mandatory requirements. The Chief Secretary is directed to initiate necessary action against all those concerned for passing such illegal orders and recover the monetary loss caused to the State, in passing such illegal impugned orders, resulting in unnecessary litigation and expenditure to the exchequer of the State and also initiate necessary disciplinary action on the alleged misconduct of delinquent. Since the impugned order is passed by one K.Rajagopal,the then Deputy Examiner of Local Fund Accounts,and it is found to be illegal, he is liable to pay the costs of this litigation from his own pocket. The petitioner is directed to be reinstated with all service benefits, however,with 25% of back wages only on the principle of no work no full pay.

35. In the result, this Writ Petition is allowed with costs of Rs.10,000/- (Rupees Ten Thousand only) and the impugned order is quashed. The costs of Rs.10,000/- shall be paid by K.Rajagopal, the then Deputy Examiner of Local Fund Accounts, to the petitioner

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within a period of 30 days from the date of receipt of copy of this order.

dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Deputy Examiner of Local Fund Accounts,
64, Thayar Sahib Street,
Chennai-600 002.

1 cc to Mr.K.Balakrishnan, Advocate, SR.61562

mrd (co)

dv/19.12.06 W.P.No.4569 OF 1999

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